

**IOWA WORKFORCE DEVELOPMENT  
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

**FRANK D OSBORNE**  
Claimant

**APPEAL NO. 13A-UI-08334-SWT**

**ADMINISTRATIVE LAW JUDGE  
DECISION**

**SUBURBAN CONSTRUCTION INC**  
Employer

**OC: 02/03/13**  
**Claimant: Appellant (1)**

Section 96.5-2-a – Discharge

**STATEMENT OF THE CASE:**

The claimant appealed an unemployment insurance decision dated July 9, 2013, reference 03, that concluded he was discharged for work-connected misconduct. A telephone hearing was held on August 20, 2013. The parties were properly notified about the hearing. The claimant participated in the hearing. Darin Wilson participated in the hearing on behalf of the employer.

**ISSUE:**

Was the claimant discharged for work-connected misconduct?

**FINDINGS OF FACT:**

The claimant worked full time for the employer as a crewmember from April 30, 2012, to April 23, 2013. The claimant was informed and understood that under the employer's work rules, employees were required to notify the employer before the start of their shift if they were not able to work as scheduled and were subject to discharge for being absent or late for work without notifying the employer. On March 4, the claimant received a final written warning for being absent without notice on March 1. He was informed that if he had another no-call/no-show, he would be terminated.

The claimant was scheduled to work April 22. The claimant was sick. His girlfriend had shut off his phone because he and his girlfriend had been fighting so he did not call in. He did not attempt to find another phone to call in.

The employer discharged the claimant when he reported to work on April 23, 2013, for violating the company's notification policy again.

**REASONING AND CONCLUSIONS OF LAW:**

The issue in this case is whether the claimant was discharged for work-connected misconduct as defined by the unemployment insurance law.

The unemployment insurance law disqualifies claimants discharged for work-connected misconduct. Iowa Code § 96.5-2-a. The rules define misconduct as (1) deliberate acts or omissions by a worker that materially breach the duties and obligations arising out of the contract of employment, (2) deliberate violations or disregard of standards of behavior that the employer has the right to expect of employees, or (3) carelessness or negligence of such degree of recurrence as to manifest equal culpability, wrongful intent or evil design. Mere inefficiency, unsatisfactory conduct, failure in good performance as the result of inability or incapacity, inadvertencies or ordinary negligence in isolated instances, or good faith errors in judgment or discretion are not misconduct within the meaning of the statute. 871 IAC 24.32(1).

The claimant's violation of a known work rule and final warning was a willful and material breach of the duties and obligations to the employer and a substantial disregard of the standards of behavior the employer had the right to expect of the claimant. Since he was told that another no-call/no-show would result in his discharge, he should have located another phone when he discovered his had been turned off. Work-connected misconduct as defined by the unemployment insurance law has been established in this case.

**DECISION:**

The unemployment insurance decision dated July 9, 2013, reference 03, is affirmed. The claimant is disqualified from receiving unemployment insurance benefits until he has been paid wages for insured work equal to ten times his weekly benefit amount, provided he is otherwise eligible.

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Steven A. Wise  
Administrative Law Judge

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Decision Dated and Mailed

saw/css